

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14**

**Ogden Newspapers of Kansas, LLC d/b/a  
Lawrence Journal-World**

**Employer**

**and**

**Case 14-RC-267470**

**United Media Guild, TNG-CWA Local 36047**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

On October 13, 2020,<sup>1</sup> United Media Guild, TNG-CWA Local 36047 ("Petitioner") filed its original petition in this case with the National Labor Relations Board ("Board"). By this petition, Petitioner seeks to represent all reporters and copy editors employed by the Ogden Newspaper of Kansas, LLC d/b/a Lawrence Journal-World ("Employer") at its facility currently located at 1035 3rd Street, Suite 101 B, Lawrence, Kansas, but excluding managers, office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.<sup>2</sup>

The only matter at issue is whether the election should be conducted by manual or mail ballot method. Election arrangements, including the voting method, are not litigable matters at a pre-election hearing. Sec. 102.66(g)(1) of the Board's Rules and Regulations. See also, Representation-Case Procedures, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)). On October 29, the parties entered into a stipulated record and shortly after, pursuant to that stipulation, they submitted their positions to me on the voting method and details of election.

Based on the stipulated record, having reviewed the parties' positions, and having considered the factors discussed below, I have determined that because of the extraordinary circumstances presented by the ongoing COVID-19 pandemic, the Board will conduct this election by mail ballot.

***POSITIONS OF THE PARTIES***

Petitioner maintains the only prudent option is to conduct the election by mail ballot, citing to increasing numbers of confirmed COVID-19 cases in Douglas County, where a manual election would take place. It highlights that the petitioned-for

---

<sup>1</sup> All dates are in 2020 unless otherwise noted.

<sup>2</sup> The parties stipulated that the On-Line Editor will vote subject to challenge. There are approximately 11 people in the petitioned-for unit, including the On-Line Editor.

employees currently work from home and a manual election causes unnecessary travel and congregation that further increases the risk of contracting COVID-19.

The Employer does not contend that COVID-19 is no longer an issue in the community but asserts “the risk of COVID-19 exposures in Lawrence, Kansas is not so high that they cannot be mitigated.” It will comply with the suggested manual election protocols set forth in General Counsel Memorandum 20-10 (“GC Memo 20-10”), including limiting the parties to a single observer for the election and a single representative for the ballot count. The Employer proposes holding the manual election in a 27-foot by 10-foot conference room of its facility over one 3-hour session.

### ***THE BOARD’S STANDARD***

On November 9, the Board set forth “six situations that suggest the propriety of mail ballots due to the Covid-19 pandemic,” noting that “[w]hen one or more of these situations is present, a Regional Director should consider directing a mail-ballot election.” *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. at 1 (2020). Those six situations are:

- 1) The Agency office tasked with conducting the election is operating under “mandatory telework” status;
- 2) Either the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
- 3) The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
- 4) The employer fails or refuses to commit to abide by the GC Memo 20-10 protocols;
- 5) There is a current Covid-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and
- 6) Other similarly compelling considerations.

Id.

As the Board acknowledged, no Regional Office, including Subregional and Resident Offices, has been in a mandatory-telework status since mid-June. The Employer’s proposed polling place does not appear to violate any mandatory state or local health orders and, as noted above, it has committed to abide by the protocols in GC Memo 20-10.

As noted above, the Board set the standard for 14-day testing positivity rate at 5% or higher. The City of Lawrence, where a manual election would take place, is located in Douglas County, Kansas. According to the Academic Health Department, a partnership between the Lawrence-Douglas County Health Department and the University of Kansas, as of November 15, the 14-day positivity rate for Douglas County was 13.4% and 12.3% for the City of Lawrence,<sup>3</sup> more than double the Board's standard that "ordinarily indicate[s] the propriety of a mail-ballot election." *Aspirus*, above, slip op. at 6. On November 12, this positivity rate was cited by Douglas County Health Officer George Marcellino when he updated the County's emergency health order and limited mass gatherings to no more than 15 people (down from 45 people) starting November 13.<sup>4</sup>

The current status of COVID-19 at the Employer's facility is unknown. The record does not contain information regarding how many employees or visitors to the facility have tested positive for, exhibited symptoms of, or quarantined for any reason related to Covid-19. However, as indicated above, the petitioned-for employees currently work from home.

Based on the high positivity rate, which also appears to be increasing, a mail-ballot election is warranted.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>5</sup>

---

<sup>3</sup> "Case Numbers & Data" (updated November 12). Lawrence-Douglas County Public Health. <https://ldchealth.org/456/Case-Numbers-Data> (accessed November 17) (new 14-day moving averages for testing positivity are posted on Mondays and Thursdays). I also note the County's most recent published "COVID-19 Daily Update" (November 9) indicated a positivity rate of 11.4%. <https://ldchealth.org/Archive.aspx?ADID=508> (accessed November 17).

<sup>4</sup> <https://ldchealth.org/DocumentCenter/View/3312/Emergency-Order-of-Local-Health-Officer---November-13-V2> (accessed November 17).

<sup>5</sup> The parties stipulated to the following commerce facts:

The Employer is a State of Kansas limited liability company engaged in the business of publishing a newspaper from its facility located at 1035 North 3rd Street, Suite 101-B, Lawrence, Kansas. During the past year, a representative period, the Employer in the course and conduct of its business operations purchased and received goods and services valued in excess of \$50,000 directly from sources located outside the State of Kansas. The Employer annually derives gross annual revenues in excess of \$1,000,000.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a voting group appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All reporters and copy editors employed by the Employer at its facility located at 1035 3<sup>rd</sup> Street, Suite 101 B, Lawrence, Kansas, and excludes all office clerical employees, professional employees, managers, guards and supervisors as defined in the Act, is appropriate for the purposes of collective bargaining.

#### **DIRECTION OF ELECTION**

The Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **United Media Guild, TNG-CWA Local 36047**.

##### **A. Election Details**

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate voting group at 3:00 p.m. on **Friday, December 4, 2020**, from the office of the National Labor Relations Board, Subregion 17 - 8600 Farley Street – Suite 100, Overland Park, Kansas 66212-4677. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Friday, December 11, 2020**, or otherwise requires a duplicate mail ballot kit, should communicate immediately with the National Labor Relations Board by calling the Subregion 17 Office at (913) 275-6525.

The ballots will be commingled and counted by the Subregion 17 office at 2:00 p.m. CDT on **Monday, December 28, 2020**. In order to be valid and counted, the returned ballots must be received by the Subregion 17 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which will be held by videoconference. A meeting invitation for the videoconference will be sent to the

parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

## **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **November 14, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

## **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the Regional Director and the parties by **Tuesday, November 24, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman

10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

The list must be filed electronically with the Subregion and served electronically on the other parties named in this decision. The list must be electronically filed with the Subregion by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

November 20, 2020

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

**Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.** To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

**DATED** at Overland Park, Kansas, this 20<sup>th</sup> day of November 2020.



---

William B. Cowen, Acting Regional Director  
National Labor Relations Board  
Region 14/Subregion 17  
8600 Farley Street – Suite 100  
Overland Park, Kansas 66212-4676